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Decision no. 71-44 DC of 16 JULY 1971

Law completing the provisions of Articles 5 and 7 of the Law of 1 July 1901 on association agreements

The Constitutional Council was seized on 1 July 1971 by the President of the Senate, in accordance with the provisions of Article 61 of the Constitution, regarding the text of the Law, approved by the National Assembly and the Senate and enacted by the National Assembly, completing the provisions of Articles 5 and 7 of the Law of 1 July 1901 on association agreements;

Having regard to the Constitution and its preamble;

Having regard to Ordinance of 7 November 1958 concerning the basic law on the Constitutional Council, including in particular Chapter II of Title II of the said Ordinance;

Having regard to the Law of 1 July 1901 on association agreements, as amended;

Having regard to the Law of 10 January 1936 on combat squads and private militias;

1. Considering that the Law brought before the Constitutional Council for examination was put to a vote before the two Houses of Parliament, in accordance with the procedures laid down by the Constitution, during the course of the parliamentary session starting on 2 April 1971;
2. Considering that there are grounds to include the principle of freedom of association amongst the fundamental principles recognised under the laws of the Republic and solemnly reaffirmed in the preamble to the Constitution; that this principle constitutes the basis for the general provisions of the Law of 1 July 1901 on association agreements; that according to this principle, associations may be freely established and may be rendered public subject to the sole requirement of the lodging of prior notice; that accordingly, with the exception of measures which are likely to be taken in relation to particular categories of association, the validity of the establishment of associations may not be subject to prior action by the administrative authorities, or even by the judicial authorities, even if they would appear to be invalid or would have an unlawful object;
3. Considering that, if nothing has changed regarding the establishment of undeclared associations, the provisions of Article 3 of the Law, the text of which has been referred to the Constitutional Council for a review of its compatibility with the Constitution prior to enactment, have the objective of establishing a procedure according to which the acquisition of legal capacity by declared associations may be subject to a prior control of their legality by the judicial authorities;
4. Considering accordingly that there are grounds to rule that the provisions of Article 3 of the Law referred to the Constitutional Council for examination which complete Article 7 of the Law of 1 July 1901 are unconstitutional, and accordingly in consequence that the provisions of the last sentence of subparagraph 2 of Article 1 of the law referred to the Constitutional Council which refer to Article 3 are also unconstitutional;



5. Considering that it is not clear either from the text concerned, as drafted and approved, or from the debates to which discussion of the draft bill gave rise in Parliament, that the aforementioned provisions are inseparable from the text of the Law as a whole which was referred to the Council;

6. Considering finally that the remaining provisions of this text do not breach any provision contained in the Constitution;

HELD :

Article 1 :

The provisions of Article 3 of the law referred to the Constitutional Council for examination completing the provisions of Article 7 of the Law of 1 July 1901 and the provisions of Article 1 of the law referred to the Council which refers to the former are hereby ruled unconstitutional.

Article 2 :

The remaining provisions of the said Law are hereby upheld as constitutional.

Article 3 :

This decision shall be published in the Journal Officiel of the French Republic.

Journal officiel of 18 July 1971, p. 7114
Collection, p. 29
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